In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1010

JOHN TERREL HAMPTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 1968. Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to February 3, 1969, and the petition was filed on that

day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict.

2. Whether the purchasing of a ticket for interstate transportion of an acknowledged prostitute constitutes a violation of 18 U.S.C. 2421.

STATEMENT

After a non-jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted on a one count indictment which charged the procuring of a bus ticket to be used by a woman to travel in interstate commerce for purposes of prostitution (18 U.S.C. 2421). On June 1, 1967, he was sentenced to three years' imprisonment. The court of appeals affirmed.

During 1963, petitioner lived in Detroit, Michigan with a Mrs. Quincy L. Robinson, a prostitute, for whom he was a pimp. In September, when the Detroit Police were getting "hot" (R. 36),[1] Mrs. Robin-

[1] The record on file with the Clerk of this Court, designated herein as "R." contains only the testimony of Mrs. Robinson and petitioner. Since the clerk of the trial court sought agreement from counsel as to which portions of the records required reproduction it is believed that such abbreviation is with the consent of all parties. Petitioner makes mention, however, of the testimony of Audrey Dorsey and Paul Chaiken (Pet. 7, 9). Audrey Dorsey, the madam of the Terre Haute brothel, appeared as a witness but her testimony was not transcribed (R. 41). Paul Chaiken was petitioner's em-

son informed petitioner that there was prospective work for her in Terre Haute, Indiana and furnished him with a Terre Haute telephone number. He called Terre Haute, gave the respondent Mrs. Robinson's physical description and his assurances that Mrs. Robinson would soon arrive. Petitioner then accompanied her to the Detroit bus station and purchased her ticket for Terre Haute (R. 6-16).

In Terre Haute Mrs. Robinson worked as a prostitute for a six week period. Petitioner visited her twice and received some of her money each time. She also wired him some funds through Western Union. After the police in Terre Haute also became "hot", petitioner wired Mrs. Robinson money for an airflight back to Detroit. When he met her at the Detroit airport, she gave him the $1,000 residue of the approximately $3,000 she had earned in Terre Haute (R. 19-26).

Petitioner testified that he had lived with Mrs. Robinson and knew she was a prostitute, but that it was she who made the call to Terre Haute and that he did not purchase her ticket. He visited her twice while she worked in Terre Haute, and later sent her money to come back to Detroit. They resumed their cohabitation when she returned (R. 44-61).

ARGUMENT

1. Petitioner argues that the evidence is insufficient because the proof that he purchased the ticket for

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ployer at sometime after 1963. During 1963 petitioner claimed to be self-employed while Mrs. Robinson testified he was unemployed (R. 8, 43-45).

Mrs. Robinson in order to have her go to Indiana to act as a prostitute depends on her uncorroborated testimony. The trial court sitting without a jury, was in the best position to judge the candor and credibility of the witnesses. Mrs. Robinson's testimony, if believed by the trial court, was sufficient to convict. *Caminetti* v. *United States*, 242 U.S. 470, 495; *Singleton* v. *United States*, 381 F.2d 1 (C.A. 9), certiorari denied, 389 U.S. 1024; *United States* v. *Terry*, 362 F.2d 914, 916 (C.A. 6), certiorari denied, 385 U.S. 1029.

2. The Mann Act applies to the furnishing of transportation to known prostitutes for the purpose of having them travel to another state to ply their trade. See *Bell* v. *United States*, 349 U.S. 81, 84; *Forrest* v. *United States*, 363 F.2d 348 (C.A. 5).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1969.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1023

ROBERT E. RATH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted after a jury trial of willfully attempting to evade federal income taxes, in violation of Section 7201 of the Internal Revenue Code of 1954. At his trial the prosecution introduced several hundred exhibits (Pet. 8) and numerous witnesses (Pet. 3) to prove the underlying facts, followed by a summary exhibit offered by an expert witness whose qualifications petitioner has conceded (Pet. 5, 8).

Petitioner contends that the summary and the expert's testimony invaded the province of the jury (Pet. 5). This was laid to rest in *United States* v. *Johnson,* 319 U.S. 503, 512–520; and the use of

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expert testimony to evaluate the evidence in criminal (or other) tax cases has been standard practice ever since. In *Johnson*, it was observed that by "proper guidance" from the trial court the jury must be left free to "exercise its untrammeled judgment upon the worth and weight of testimony" (p. 519). Here, the court's instructions (Pet. 12–13) explicitly left the ultimate facts to the jury's determination,[1] and petitioner does not even attempt to show how the instructions were inadequate. He accepted them in the trial court and proposed no different instructions (R. 22b–27b, 32b–33b). Clearly there is no justification for granting certiorari in order to review the court of appeals' conclusion that (Pet. 8) "The exhibit was based upon evidence previously received and the trial judge properly instructed the jury concerning it."

Petitioner also asserts that he "was convicted by a mass of irrelevant testimony" (Pet. 6). Petitioner did not contend in the court of appeals that there was a lack of evidence to support his conviction or that evidence was admitted which should have been excluded. It is obviously too late to advance such a contention now.

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[1] In addition, the prosecutor told the jury (R. 35b): "So Mr. Schiller [the expert witness] has assumed certain things from the evidence. If you don't reach the same finding, Ladies and Gentlemen, you can disregard item by item whichever you don't so find." "R." references are to the Appendix to the Government's brief in the court of appeals.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1969.

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